

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

AMY ANN PITTS,)	
)	
Petitioner,)	
)	
v.)	Civil Action No.
)	2:06cv1129-MEF-SRW
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

The respondent (Doc. No. 9) has moved for leave to file a motion to dismiss the petitioner's 28 U.S.C. § 2255 motion without filing a response on the merits, arguing as grounds that the § 2255 motion is barred from review pursuant to a waiver provision contained in the plea agreement, whereby the petitioner allegedly relinquished her right to appeal or collaterally attack her sentence. The Magistrate Judge's preliminary review of the record in this case indicates that the district court may have rejected all or part of the plea agreement, in which case any waiver provision contained in the plea agreement would be of no legal effect. *See United States v. Dean*, 80 F.3d 1535, 1539-41 (11th Cir. 1996) (where plea agreement is under Fed.R.Crim.P. 11(c)(1)(C), district court may only accept or reject the agreement in its entirety and may not modify terms of the agreement by accepting only part of the agreement); *see also United States v. Kummer*, 89 F.3d 1536, 1542-43 (11th Cir. 1996).

Accordingly, it is

ORDERED that on or before February 2, 2007, the respondent shall provide this court with additional support for its contention that the petitioner's § 2255 motion is barred from review pursuant to a waiver provision contained in a plea agreement, including evidentiary material establishing that the plea agreement was accepted by the district court.

DONE, this 24th day of January, 2007.

/s/ Susan Russ Walker

SUSAN RUSS WALKER

UNITED STATES MAGISTRATE JUDGE